



# Regulatory framework on the conformity assessment of ATM/ANS systems and ATM/ANS constituents (ATM/ANS equipment) for the safe and seamless operation of the European ATM network

RELATED NPA/CRD 2022-09, NPA 2022-107 — RMT.0161 SUBTASK 1 & SUBTASK 2

## EXECUTIVE SUMMARY

The objectives of this Opinion are to put forward a proposal regarding:

- the conformity assessment of certain ATM/ANS equipment (i.e. ATM/ANS systems and ATM/ANS constituents) as well as regarding the approval of organisations involved in its design and/or production;
- the adaptation of the implementing rules adopted on the basis of Regulation (EC) No 552/2004 to the framework under Regulation (EU) 2018/1139 as required by the legislator in accordance with Article 140(2) of the referenced Regulation, while ensuring continuous compliance with those rules by optimising the use of resources during the demonstration of compliance and reducing the administrative burden, as well as enabling the clear allocation of responsibilities to the affected parties and maximising the synergies with existing processes.

The proposed amendments will increase legal certainty and support the implementation of the seamless operation of the European Air Traffic Management network (EATMN) at all times and for all phases of flight.

The proposed new regulations and the amending ones are expected to maintain safety or even increase it through enhanced commonality, continuous compliance, and oversight of the interoperability of the EATMN while reducing the regulatory burden, increasing cost-effectiveness, and improving harmonisation among the affected parties in terms of system technical requirements.

In order to achieve these objectives, this Opinion proposes new Regulations on conformity assessment of certain ATM/ANS equipment, approval of organisations involved in the design and/or production of ATM/ANS equipment, airspace usage requirements (AUR) and amendments to Commission Implementing Regulation (EU) 2017/373 as regards conformity assessment of ATM/ANS systems and ATM/ANS constituents and interoperability of the EATMN as well as to Regulation (EU) No 923/2012 as regards interoperability of the EATMN.

<b>Domain:</b>	ATM/ANS		
<b>Related rules:</b>	Commission Regulations (EC) Nos 1032/2006, 1033/2006, 633/2007, 262/2009, 29/2009 Commission Implementing Regulations (EU) Nos 1206/2011, 1207/2011, 1079/2012, 923/2012 and Commission Implementing Regulation (EU) 2017/373		
<b>Affected stakeholders:</b>	ATM/ANS providers; organisations involved in the design and/or production of ATM/ANS systems and ATM/ANS constituents (ATM/ANS equipment); Member States; national competent authorities (NCAs), including EASA; aircraft operators; and where applicable, aerodrome operators.		
<b>Driver:</b>	Efficiency/proportionality	<b>Rulemaking group:</b>	Yes
<b>Impact assessment:</b>	Yes		

## EASA rulemaking procedure milestones

Start Terms of Reference	Public Consultation (NPA 2022-09)	Proposal to the Commission Opinion	Adoption by Commission Implementing/Delegated act	Decision Detailed Specifications, Acceptable Means of Compliance, Guidance Material
14.2.2020	16.8.2022			
	Advisory Body Consultation (NPA 2022-107)	31.1.2023	2023/Q3	2023/Q3
	30.11.2022			



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## 1. About this Opinion

### 1.1. How this Opinion was developed

The European Union Aviation Safety Agency (EASA) developed this Opinion in line with Regulation (EU) 2018/1139<sup>1</sup> (the ‘Basic Regulation’) and the Rulemaking Procedure<sup>2</sup>.

This Opinion results from the activities undertaken under rulemaking task (RMT).0161, which is included in Volume II of the European Plan for Aviation Safety (EPAS) for 2023-2025<sup>3</sup>, and whose scope was defined in the associated ToR<sup>4</sup>. RMT.0161 has been structured into three subtasks to clearly describe the work undertaken with this rulemaking activity as follows:

- Subtask 1: Establishment of an EU regulatory framework and amendment of the respective provisions on the conformity assessment of ATM/ANS systems and ATM/ANS constituents (ATM/ANS equipment) to contribute to the safety and interoperability of the EATMN.
- Subtask 2: Review of the content of the repealed SES interoperability framework previously established on the basis of Regulation (EC) No 552/2004<sup>5</sup> and the related implementing rules<sup>6</sup>

<sup>1</sup> Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1535612134845&uri=CELEX:32018R1139>).

<sup>2</sup> EASA is bound to follow a structured rulemaking process as required by Article 115(1) of Regulation (EU) 2018/1139. Such a process has been adopted by the EASA Management Board (MB) and is referred to as the ‘Rulemaking Procedure’. See MB Decision No 01-2022 of 2 May 2022 replacing Decision No 18-2015 of 15 December 2015 concerning the procedure to be applied by EASA for the issuing of opinions, certification specifications and guidance material (<https://www.easa.europa.eu/the-agency/management-board/decisions/easa-mb-decision-no-01-2022-rulemaking-procedure-repealing-mb>).

<sup>3</sup> <https://www.easa.europa.eu/en/document-library/general-publications/european-plan-aviation-safety-2023-2025>

<sup>4</sup> <https://www.easa.europa.eu/document-library/terms-of-reference-and-group-compositions/tor-rmt0161>

<sup>5</sup> Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation) (OJ L 96, 31.3.2004, p. 26) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004R0552&qid=1674542992703>).

<sup>6</sup> Regulation (EC) No 1032/2006 of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units (OJ L 186, 7.7.2006, p. 27) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006R1032&qid=1674543148369>).

Commission Regulation (EC) No 1033/2006 of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the single European sky (OJ L 186, 7.7.2006, p. 46) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006R1033&qid=1674543264393>).

Commission Regulation (EC) No 633/2007 of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units (OJ L 146, 8.6.2007, p. 7) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007R0633&qid=1674543291364>).

Commission Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the single European sky (OJ L 13, 17.1.2009, p. 3) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009R0029&qid=1674543405636>).

Commission Regulation (EC) No 262/2009 of 30 March 2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the single European sky (OJ L 84, 31.3.2009, p. 20) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009R0262&qid=1674543453221>).

Commission Implementing Regulation (EU) No 1206/2011 of 22 November 2011 laying down requirements on aircraft identification for surveillance for the single European sky (OJ L 305, 23.11.2011, p. 23) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R1206&qid=1674543651219>).



and adaptation of them to the new EASA regulatory framework concerning ATM/ANS ground equipment (being developed under Subtask 1).

- Subtask 3: Establishment of the related acceptable means of compliance (AMC), guidance material (GM) and detailed specifications (DSs) supporting the implementation of the framework .

EASA developed the proposal with the support of experts nominated by the EASA Advisory Bodies (Rulemaking Group RMT.0161) as well as of subject-matter EUROCONTROL experts. During the rule development the strategic inputs provided by the Steering Group on ATM ground equipment were duly taken into account.

The *draft* regulatory text of this Opinion results from:

- the public consultation of Notice of Proposed Amendment (NPA) 2022-09 titled ‘Establishment of a regulatory framework on the conformity assessment of ATM/ANS systems and ATM/ANS constituents (ATM/ANS equipment)’<sup>7</sup> developed under Subtask 1 of RMT.0161; and
- the consultation with the EASA Advisory Bodies (ABs)<sup>8</sup>, in accordance with Article 6(2) of MB Decision No 01-2022, through NPA 2022-107 titled ‘Simpler interoperability framework for the single European sky airspace’, developed under Subtask 2 of RMT.0161.

With reference to NPA 2022-107 (Subtask 2 of RMT.0161), EASA decided to have a focused consultation with the EASA ABs in accordance with Article 6(3) of the Rulemaking Procedure as the purpose of the related regulatory proposal was not to introduce new requirements on affected stakeholders<sup>9</sup>, but to reorganise existing obligations and principles in a coherent manner with the new regulatory framework.

Furthermore, EASA held a workshop on 16 December 2022.

The *final* text of this Opinion and the resulting draft regulations have been developed by EASA considering the feedback received during the consultations.

Finally, EASA sought the advice of the Member States’ Advisory Body (MAB) of the draft final Opinion in accordance with Article 6(9) of the Rulemaking Procedure.

The draft proposal is published on the EASA website<sup>10</sup>.

The major milestones of the aforementioned rulemaking activities are presented on the title page.

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Commission Implementing Regulation (EU) No 1207/2011 of 22 November 2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky (OJ L 305, 23.11.2011, p. 35) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R1207&qid=1674543710782>).

Commission Implementing Regulation (EU) No 1079/2012 of 16 November 2012 laying down requirements for voice channels spacing for the single European sky (OJ L 320, 17.11.2012, p. 14) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R1079&qid=1674543767639>).

<sup>7</sup> [NPA 2022-09 - Establishment of a regulatory framework on the conformity assessment of ATM/ANS systems and ATM/ANS constituents \(ATM/ANS equipment\) \(Subtask 1\) | EASA \(europa.eu\)](#)

<sup>8</sup> ADR TeB, ADR.TEC, Air Crew TeB, Air Ops TeB, ATM/ANS TeB, ATM/ANS.TEC, FS.TEC, GA TeB, GA.COM, MAB, SAB, SAB MB, and SM TeB.

<sup>9</sup> ATM/ANS providers; organisations involved in the design and/or production of ATM/ANS systems and ATM/ANS constituents (ATM/ANS equipment); Member States; national competent authorities (NCAs), including EASA; aircraft operators; and where applicable, aerodrome operators.

<sup>10</sup> <http://easa.europa.eu/document-library/opinions>



## 1.2. The next steps

This Opinion includes the following regulatory proposals:

- A new COMMISSION DELEGATED REGULATION (EU) .../... of XXX laying down common technical requirements and administrative procedures for the conformity assessment of ATM/ANS systems and ATM/ANS constituents;
- A new COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX laying down technical requirements and administrative procedures for the approval of organisations involved in the design and/or production of ATM/ANS systems and ATM/ANS constituents;
- A new COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX laying down common requirements on aircraft equipment for the use of the single European sky airspace and repealing Regulation (EC) No 29/2009, Regulation (EU) No 1206/2011, Regulation (EU) No 1207/2011 and Regulation (EU) No 1079/2012; and
- Amendments to:
  - Implementing Regulation (EU) 2017/373 as regards ATM/ANS systems and ATM/ANS constituents and interoperability of the European Air Traffic Management network and repealing Regulation (EC) No 1032/2006, Regulation (EC) No 633/2007 and Regulation (EC) No 262/2009; and
  - Implementing Regulation (EU) No 923/2012 as regards interoperability of the European Air Traffic Management network and repealing Regulation (EC) No 1033/2006.

It is submitted to the European Commission, which will use it as a technical basis to prepare the resulting EU regulations.

In parallel with the European Commission adoption process, EASA will continue working on the development of the associated *draft* AMC, GM and DSs. EASA will adapt these draft AMC and GM to the potential changes that may be introduced in the final text of the subject EU regulations during the regulatory process on the adoption of the regulations. The ED Decision(s) containing the associated AMC, GM and DSs will be published by EASA following the publication of the aforementioned EU regulations by the European Commission.



## 2. In summary — why and what

### 2.1. Why we need to amend the rules — issue/rationale

The Basic Regulation lays down interoperability requirements for the EATMN and mandates the development of the related delegated and implementing acts as regards the certification or declaration of ATM/ANS systems and ATM/ANS constituents as well as of the organisations involved in their design, production, and maintenance. At the same time, the interoperability Regulation was repealed by the Basic Regulation, but Article 139 of the Basic Regulation establishes the transitional provisions whereby certain articles of the interoperability Regulation and its annexes remain applicable until the date of application of the related delegated acts and insofar as those acts cover the subject matter of the relevant provisions of the interoperability Regulation, and in any case not later than 12 September 2023.

In this context, it is necessary to introduce a new regulatory framework in relation to ATM/ANS systems and ATM/ANS constituents (referred to as ‘ATM/ANS equipment’) that ensures the safe, interoperable, and efficient provision of ATM/ANS services. The new regulatory framework proposed with this Opinion will enable the conformity assessment of certain ATM/ANS equipment by means of certification or declaration(s) as well as the approval of organisations involved in their design and/or production.

In addition, since the requirements that are necessary for the interoperability of the EATMN are either contained in the Basic Regulation or in the draft delegated or implementing acts proposed to be adopted on its basis, the eight SES interoperability Regulations implementing Regulation (EC) No 552/2004 (repealed by the Basic Regulation) will cease to apply and should be repealed as proposed in this Opinion.

With the repeal of the interoperability Regulation, Article 140(2) of the Basic Regulation requires that not later than 12 September 2023 the implementing rules adopted on the basis of Regulations (EC) No 216/2008 and (EC) No 552/2004 shall be adapted to the Basic Regulation.

This initiative offers a unique opportunity to address all shortcomings of the current interoperability framework, which are summarised in the following paragraphs.

The allocation of responsibilities for the conformity assessment of ATM/ANS systems and ATM/ANS constituents (ATM/ANS equipment) established under the current SES interoperability framework has not ensured an appropriate level playing field, due to the implementation of differing arrangements among the affected entities (NCAs, ANSPs, and manufacturers) across Europe. In this context, the SES interoperability framework established by the interoperability Regulation and the related implementing rules does not explicitly regulate organisations involved in the design and/or production of ATM/ANS equipment; instead, these organisations are indirectly affected by those interoperability requirements applicable for ATM/ANS providers using the equipment they manufactured.

Moreover, the framework established by the interoperability Regulation does not provide the necessary clarity as regards the requirements that such ATM/ANS equipment should fulfil; in particular, the prevalence of national technical specifications used in procurement has led to the fragmentation of the ATM/ANS ground equipment market and has not facilitated industry cooperation at European Union level. As a result, the manufacturing industry is negatively affected since it often needs to adapt its products to various national markets, i.e. to ATM/ANS service providers across the



Union. These practices render the development and the implementation of new technologies unnecessarily difficult and, in turn, slow down the introduction of new operational concepts that are required to increase the capacity of the ATM system and to improve its performance. Another relevant aspect to consider is that the responsibilities of the various parties involved in the ATM/ANS equipment conformity assessment process, and particularly of the various parties involved and their oversight, are not clearly defined and thus their oversight is not performed in a standardised and consistent manner.

To address those deficiencies, the new regulatory framework for ATM/ANS equipment, proposed with this Opinion, aims to adequately and clearly allocate the responsibilities to the various affected stakeholders along the entire ATM/ANS equipment life cycle, thus, allowing for swifter and more efficient conformity assessment processes. At the same time, this improved allocation of responsibilities would facilitate the planning and the acquisition of the necessary capabilities by all affected stakeholders.

## 2.2. What we want to achieve — objectives

The proposal contained in this Opinion aims at contributing the achievement of the overall objectives of the EASA system as defined in Article 1 of the Basic Regulation, by addressing the issues described in Section 2.1.

More specifically, the proposed regulatory framework will ensure that the relevant safety, security, performance, and interoperability objectives are met by supporting the efficient operations of the EATMN, in compliance with the applicable requirements of the Basic Regulation and of the delegated and implementing acts adopted on its basis.

In this context, the specific objectives are to:

- facilitate the establishment of a controlled mechanism for the coordinated development and implementation of new, agreed and validated ATM/ANS concepts of operation and/or technologies;
- minimise any undesirable implementation issues, i.e. resolve legal uncertainties identified during standardisation inspections that may compromise operational functionalities, and promote technical interoperability by using DSs;
- facilitate continued compliance of the affected parties with the safety and interoperability rules by optimising the use of resources during the demonstration of compliance, and reduce the administrative burden;
- achieve a clear allocation of responsibilities to the affected parties and maximise the synergies with existing processes related to the introduction of changes to ATM/ANS functional systems resulting from the deployment of new or updated ATM/ANS equipment;
- promote the development of the internal market by ensuring fair competition while facilitating the free movement of ATM/ANS equipment through the mutual recognition of certificates or declarations, without further requirements or evaluation, in all Member States; and
- enable increased efficiency and reduced costs as regards the procurement and maintenance of ATM/ANS equipment, as well as improved operational coordination for the attestation process.



### 2.3. How we want to achieve it — overview of the proposed amendments

In order to achieve the objectives listed in Section 2.2, this Opinion proposes the introduction of a new EU regulatory framework for the conformity assessment of ATM/ANS equipment, enabling simpler interoperability of the EATMN.

Towards a total system approach to aviation safety and in line with better regulation principles, the proposal is structured as follows:

- three new Commission Regulations:
  - COMMISSION DELEGATED REGULATION (EU) .../... of XXX laying down common technical requirements and administrative procedures for the conformity assessment of ATM/ANS systems and ATM/ANS constituents; it will provide three different instruments for the conformity assessment, namely: certification, declaration, and statement of compliance;
  - COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX laying down technical requirements and administrative procedures for the approval of organisations involved in the design and/or production of ATM/ANS systems and ATM/ANS constituents (hereinafter referred to as ‘ATM/ANS equipment manufacturers’); and
  - COMMISSION IMPLEMENTING REGULATION (EU) .../... laying down common requirements on aircraft equipment for the use of single European sky airspace and repealing Regulation (EC) No 29/2009, Regulation (EU) No 1206/2011, Regulation (EU) No 1207/2011 and Regulation (EU) No 1079/2012; and
- amendments to two existing Commission Regulations:
  - COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX amending Implementing Regulation (EU) 2017/373 as regards the ATM/ANS systems and ATM/ANS constituents and the interoperability of the European Air Traffic Management network and repealing Regulation (EC) No 1032/2006, Regulation (EC) No 633/2007 and Regulation (EC) No 262/2009; and
  - COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX amending Implementing Regulation (EU) No 923/2012 as regards interoperability of the European Air Traffic Management network and repealing Regulation (EC) No 1033/2006

#### 2.3.1. COMMISSION DELEGATED REGULATION (EU) .../... of XXX laying down common technical requirements and administrative procedures for the conformity assessment of ATM/ANS systems and ATM/ANS constituents

This draft delegated act establishes the new framework on the conformity assessment of certain ATM/ANS equipment. This new framework is built on the nature and the risk of the operation or functionality enabled by the particular equipment and makes use of existing methodologies and best practices. It establishes three different instruments based on the principles established by the Basic Regulation:

- certification by EASA of certain ATM/ANS equipment based on detailed (certification) specifications (**Article 4**).





- declaration by an approved organisation involved in the design and/or production of ATM/ANS equipment for other ATM/ANS equipment based on detailed declaration specifications (**Article 5**); and
- statement of compliance (SoC) by the ATM/ANS provider or by an approved organisation involved in the design and/or production of ATM/ANS equipment for other ATM/ANS equipment, confirming that the equipment complies with the technical standards listed in DSs (**Article 6**); this approach is similar to the current EU declaration of conformity scheme based on the SES interoperability Regulation as the ATM/ANS providers should verify that certain ATM/ANS equipment complies with the technical standards established by recognised standardisation bodies and listed in DSs (i.e. for that ATM/ANS equipment, which is neither subject to certification by EASA nor to declaration by organisations involved in its design and/or production). The novelty is the inclusion of the possibility for an approved organisation involved in the design and/or production of ATM/ANS equipment to issue a SoC, which provides flexibility and is beneficial for the ATM/ANS providers.

The referenced Articles 4, 5 and 6 include the high-level criteria aiming at categorising the equipment subject to the different methods of conformity assessment. The supplementary detailed categorisation, which will constitute the basis for the application of the conformity assessment instruments described above, is established in Annex I to the delegated regulation prescribing which ATM/ANS functions and services they support; they will be further complemented by related DSs, the AMC and GM. For clarity and legal consistency reasons, the content of this Annex mirrors the list of systems and procedures required to support the functions and services included in Annex VIII to the Basic Regulation.

It should be highlighted that **Annex I** defines the envelop of ATM/ANS services and functions subject to conformity assessment requirements; equipment supporting any other services and functions within the ATM/ANS scope, but not included in the table, should not be considered as subject to the conformity assessment requirements.

The certification or declaration(s), including the statement of compliance, which will be based on the demonstration of compliance with the relevant detailed certification/declaration specifications, is the novelty introduced with this regulatory proposal in accordance with Article 47(1)(a) of the Basic Regulation. In this context, **ATM/ANS.EQMT.AR.A.035 ‘Detailed specifications for the certification and declaration of design compliance’** requires the Agency to establish and make available detailed technical specifications which the organisations may use to demonstrate compliance with the relevant essential requirements set out in Annex VIII and, if applicable, Annex VII to the Basic Regulation. Furthermore, the provision requires the detailed technical specifications to provide design standards which reflect the state of the art and best design practices, and which build on valuable experience gained and scientific and technical progress, and on the best available evidence and analyses as regards ATM/ANS equipment.

It is anticipated that, when developing the DSs for ATM/ANS equipment, EASA may decide to refer to widely recognised international standards published by industry, through standards development organisations (SDOs), as a means of compliance in accordance with Article 1(3)(d) of the Basic Regulation.

This scheme would enable an effective and standardised oversight of ATM/ANS equipment subject to conformity assessment, while promoting and enabling the development and implementation of new



technologies and allocating clear responsibilities for each of the actors involved, namely organisations involved in the design and/or production of ATM/ANS equipment, ATM/ANS providers as customers and users, as well as competent authorities (either NCAs or EASA).

Following the principles laid down in Article 80(2) of the Basic Regulation, **Article 3 defines EASA as the competent authority** for certification, oversight, and enforcement in accordance with Article 62(2) of the Basic Regulation with respect to certificates and declarations for ATM/ANS equipment issued by approved organisations.

During the NPA 2022-09 consultation the Agency sought advice on the inclusion of a derogation provision and acceptance of third-country organisations involved in the design and/or production of ATM/ANS equipment to EU market. Based on the feedback received, **Article 7 ‘Third-country organisations involved in the design and/or production of ATM/ANS equipment’** is introduced with the aim of allowing an organisation whose principal place of business is in a third country to demonstrate its capability by holding a certificate issued by that third country that covers the ATM/ANS equipment for the certification of which that organisation applies to the Agency, provided that the Agency has determined that the system of that third country includes the same independent level of checking of compliance as provided for by the implementing act on the approval of organisations involved in the design and/or production of ATM/ANS equipment, either through an equivalent system of approvals of organisations or through the direct involvement of the competent authority(ies) of that third country. In such case, that organisation shall be considered as a design organisation approval holder.

**Article 8 ‘Transitional provisions’** contains the necessary transitional measures for the introduction of the new framework acknowledging the necessary time to implement the new complex framework. In this context, the specific aspects are the approval of design and/or production organisations and the need to demonstrate compliance of the equipment with the relevant DSs leading to certification or declaration. Besides the timeframes required for the demonstration of compliance, all affected entities will need to adapt their organisational structures in terms of both processes and the necessary qualified resources. Therefore, Article 8 underlines that ATM/ANS equipment already deployed would not negatively affect the intended objectives nor would represent any regression from the current safety and interoperability levels.

In more detail, Article 8 stipulates the following:

- A 5-year transitional period is provided;
- Equipment already in service before the new framework would apply and holding an EC Declaration of Verification (DoV) to be considered compliant with the requirements subject to an evaluation by EASA in the latest part of the transitional period [5 years from the entry into force of the regulation, i.e. 2028].
- Equipment (in the ‘certification’ and ‘declaration’ categories) put into operation during the transitional period [5 years from the entry into force of the regulation, i.e. 2028] might also be attested by the ATM/ANS providers using the equipment. Once the transition period is over EASA will be required to assess if the equipment in such circumstance ensures a level of safety, security, performance, and interoperability equivalent to that resulting from the full application of the delegated act.

- As from the end of the transitional period, the attestation evidence for all ATM/ANS equipment to be introduced into service, either new equipment or changes/evolution to already deployed equipment, will need to be fully compliant with the delegated act.

Considering the three instruments (i.e. certification, declaration, and SoC), the transitional provisions would be more relevant for ATM/ANS equipment subject to certification and declaration under the new regulatory framework, while for the ATM/ANS equipment which falls within the category of ATM/ANS equipment subject to a statement of compliance, the EC declarations of verification would be considered as grandfathered as the proposal stipulates that they should continue to be valid, without any additional requirements for the ATM/ANS providers that operate that equipment.

In conclusion, this approach would prevent a regulatory ‘gap’ from occurring after 12 September 2023, and thus will ensure the necessary continuity of the activities leading to the deployment of new and upgraded ATM/ANS equipment.

### **2.3.2. COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX laying down technical requirements and administrative procedures for the approval of organisations involved in the design and/or production of ATM/ANS systems and ATM/ANS constituents**

In accordance with the provisions of the Basic Regulation, this draft implementing act introduces a scheme according to which organisations that are involved in the design and/or production of ATM/ANS equipment are required to demonstrate the capability to carry out their activities. This scheme shall be based on the issuance of an organisation approval specifying the privileges granted to organisations involved in the design and/or production of ATM/ANS equipment.

The typical life cycle of ATM/ANS equipment consists of various phases: design, production, installation, operation, and maintenance. The ATM/ANS provider is usually responsible for some of these phases, while for others the responsibility is undertaken by the organisations involved in the design and/or production of ATM/ANS equipment.

In the context of this regulatory proposal, the technical requirements and the procedures for the approval are intended to reflect a single set of privileges in the area of design and production of ATM/ANS equipment.

The responsibilities for the ATM/ANS equipment design and/or production covered under the organisation approval would comprise the following:

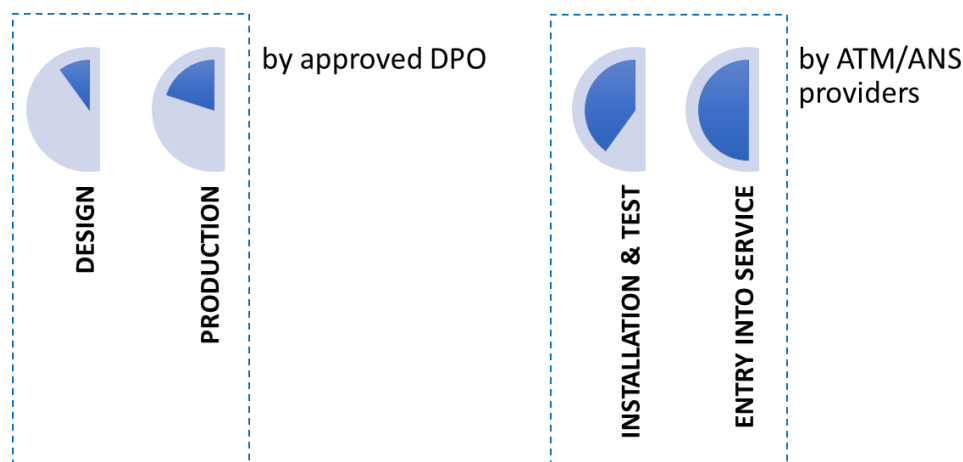
- identification of the functional requirements for ATM/ANS equipment;
- definition of the technical requirements;
- detailed architectural design;
- definition of the processes and methods for manufacture and assembly;
- manufacture in accordance with design documentation;
- preparation and update of complete technical documentation and records; and
- preparation and update of all required manuals to be provided with the equipment.

Installation and maintenance/operation are considered ATM/ANS provider responsibilities (as defined in Implementing Regulation (EU) 2017/373), and as such are already covered under the ATM/ANS provider’s certificate. Regarding those activities that are closer to the interface between ATM/ANS



equipment manufacturer and ATM/ANS provider, recurrent maintenance is considered part of the ATM/ANS provider activities, while evolutive maintenance is considered typically a design and production function under the responsibility of the ATM/ANS equipment manufacturer.

**Figure 2**



An organisation approval would be required for organisations involved in the design and/or production of ATM/ANS equipment when such equipment is subject to certification or declaration. Their privileges could also include the issue of a SoC.

Only an approved organisation would be entitled to apply for the certification of ATM/ANS equipment, or to declare compliance of the design with detailed (declaration) specifications (DSs).

The regulatory proposal structures the processes in such a way to ensure that the responsibilities linked to design and production are appropriately discharged to the organisations involved in the design and/or production of ATM/ANS equipment.

ATM/ANS providers will remain responsible for the maintenance of the equipment<sup>11</sup> and for operational tasks, as it is the case today ('business as usual'), while for the most critical ATM/ANS equipment they will be relieved of the responsibility to consolidate the conformity assessment work and attest the equipment. Their focus will be on the operational integration of ATM/ANS equipment after receiving the ATM/ANS equipment conformity assessment from the organisation involved in its design and/or production. Similarly, the responsible competent authorities of the ATM/ANS providers would focus their respective efforts on overseeing the integration and entry into service of the ATM/ANS equipment<sup>12</sup>.

<sup>11</sup> For further details, please refer to Section 2.3.2.

<sup>12</sup> For further details, please refer to Section 2.3.1.3.

Consequently, manufacturers would be required to demonstrate their capability associated with the design and/or production of certain ATM/ANS equipment, when so prescribed in the implementing acts.

In this context, organisations involved in the design and/or production of ATM/ANS equipment will be required to establish and maintain a management system in order to manage their activities and achieve their objectives. The management system establishes the policy and objectives, and defines the structure, processes and resources needed to achieve those objectives.

Further to the regulatory proposal, **EASA will act as the competent authority** for the approval of organisations involved in the design and/or production of ATM/ANS equipment as well as for the certification of, and the receipt of declarations for, ATM/ANS equipment.

Article 80(1)(c) of the Basic Regulation prescribes that EASA is responsible for the certification of organisations involved in the design, production, or maintenance of ATM/ANS systems and ATM/ANS constituents, including where they contribute to the Single European Sky ATM Research (SESAR) implementation, used in the provision of the services referred to in Article 80(1)(b). However, it is not possible to determine before the ATM/ANS equipment is designed or produced, how it will be used afterwards when it is to be put into service by an ATM/ANS provider; in particular, whether it will be used solely for the provision of ATM/ANS services within the national airspace of a Member State, or also to support cross-border service provision. The proposed scheme would facilitate market access and create the conditions to allow for any ATM/ANS equipment designed or produced in the EU to be used in both cross-border and pan-European ATM/ANS services provision.

Furthermore, in accordance with Article 80(2) of the Basic Regulation, EASA is responsible for all competent authority tasks related to certificates and declarations for ATM/ANS equipment, including oversight and enforcement. These functions could only be exercised properly, without creating unnecessary complications and administrative burden, when the competent authority for the approval of the organisations involved in the design and production of the equipment is the same authority overseeing the related certificates and declarations.

In addition, Article 80(1)(c) of the Basic Regulation should be read together with Article 80(2), and the regulatory solution proposed for the certification and declaration of ATM/ANS systems and ATM/ANS constituents is developed following Articles 45 and 47.

Nowadays, most of the ATM/ANS systems and constituents (in both the certification and declaration categories) are designed to be placed on the EU market. Those ATM/ANS systems and constituents cannot be a priori categorised concerning pan-European or local use, even less is it possible to categorise the organisations involved in the design and production based on their future catalogue of products. The reality is that all systems and constituents would be placed on the EU market and potentially support pan-European services.

In order to ensure the continuity in the application of the objectives of the current interoperability framework established by Regulation (EC) No 552/2004 (which is already repealed by the Basic



Regulation), this regulatory proposal supports the interoperability of ATM/ANS equipment at pan-European level and, as such, the opening of the EU market for such products based on a more streamlined and harmonised framework.

### **2.3.3. Draft Commission Implementing regulation (EU) .../... laying down common requirements on aircraft equipment for the use of the single European sky airspace and repealing Regulation (EC) No 29/2009, Regulation (EU) No 1206/2011, Regulation (EU) No 1207/2011 and Regulation (EU) No 1079/2012**

The Basic Regulation empowers the Commission to adopt measures for the implementation of the Basic Regulation and its essential requirements with respect to establishing and maintaining a high uniform level of aviation safety in the European Union. In this context, Article 44 of the Basic Regulation requires the adoption of implementing acts laying down detailed provisions concerning the operating rules related to the use of airspace, aircraft equipment and ATM/ANS equipment required for the use of airspace.

Accordingly, EASA proposes a new draft implementing regulation on common airspace usage requirements (AUR) and operating procedures, and concurrently the repeal of four SES interoperability Regulations implementing Regulation (EC) No 552/2004, which was also repealed by the Basic Regulation. The proposed regulation shall apply to Member States, aircraft operators and their competent authorities.

The proposed act has been structured as follows:

- the cover regulation and its articles only focus on the general applicability of the requirements, Member States' obligations, and on the dates of entry into force.
- the annexes, namely 'Part-Communication', 'Part-Navigation' and 'Part-Surveillance' and the associated subparts, include the technical requirements and refine the applicability scope accordingly.

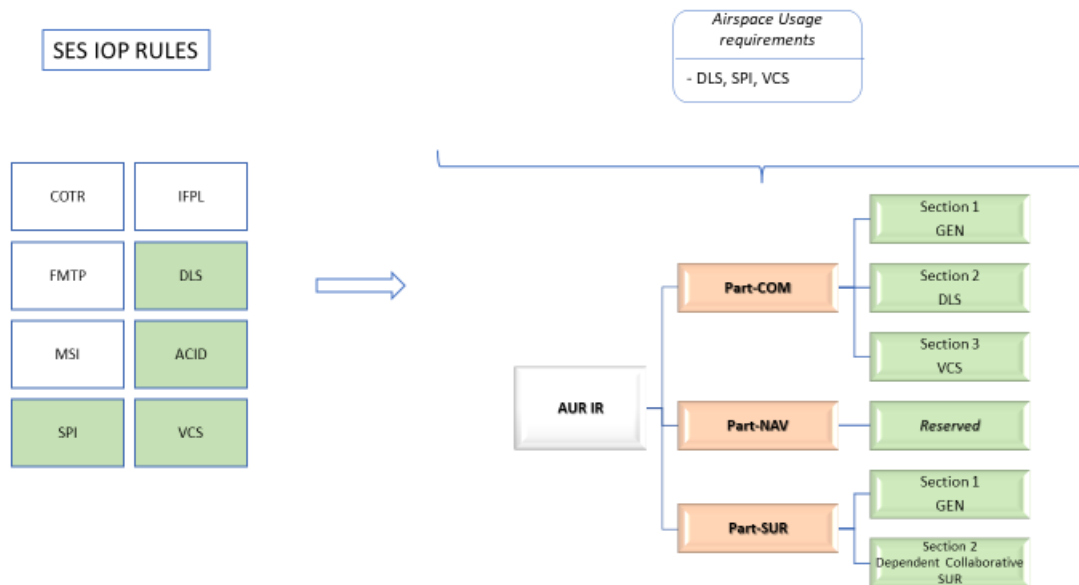
Additional subparts might be introduced in the future by dedicated rulemaking activities, as considered necessary.

The scope of this proposed act is limited to the transposition of those requirements contained in the following four SES interoperability Regulations:

- Commission Regulation (EC) No 29/2009 lays down requirements on data link services for the single European sky;
- Commission Implementing Regulation (EU) No 1206/2011 lays down requirements on aircraft identification for surveillance for the single European sky;
- Commission Implementing Regulation (EU) No 1207/2011 lays down requirements for the performance and the interoperability of surveillance for the single European sky; and
- Commission Implementing Regulation (EU) No 1079/2012 lays down requirements for voice channels spacing for the single European sky,



which contain detailed provisions concerning the operating rules related to the use of airspace and aircraft equipment required for the use of airspace.



**Figure 2 — Structure of the airspace usage requirements (AUR) implementing regulation**

EASA wishes to underline **the dual legal basis for the proposed implementing act, titled ‘Regulation laying down common requirements on aircraft equipment for use in the single European sky airspace (AUR IR)’**

The Basic Regulation, in particular Article 40(2), requires aircraft operating in the single European sky airspace to comply with the essential requirements set out in point 1 of Annex VIII as regards the use of the airspace. In order to ensure the uniform implementation of, and compliance with, the ATM/ANS essential requirements, Article 44(1)(a) empowers the Commission to adopt implementing acts laying down detailed provisions concerning the operating rules related to the use of airspace and aircraft equipment required for the use of airspace. However, neither the Basic Regulation, nor its essential requirements for the use of airspace (including essential requirements for equipment to be used in SES airspace) laid down in point 1 of Annex VIII apply to aircraft engaged in activities referred to in Article 2(3)(a)<sup>13</sup>.

On the other hand, the implementing measures adopted under Regulation (EC) No 552/2004 were consistent with the measures for provision of air navigation services as provided for in Regulation (EC) No 550/2004 (the service provision Regulation) and the organisation and the use of airspace as

<sup>13</sup> ‘aircraft, and their engines, propellers, parts, non-installed equipment and equipment to control aircraft remotely, *while carrying out military, customs, police, search and rescue, firefighting, border control, coastguard or similar activities or services under the control and responsibility of a Member State*, undertaken in the public interest by or on behalf of a body vested with the powers of a public authority, and the personnel and organisations involved in the activities and services performed by those aircraft;’

provided for in Regulation (EC) 551/2004 (the airspace Regulation). In conjunction with Regulation (EC) No 549/2004 (SES framework), the rules adopted under Regulation (EC) No 552/2004 applied to all airspace users involved in general air traffic, including State aircraft. Subsequently, compared to the Basic Regulation, the scope of Regulation (EC) No 552/2004 was broader, also covering, in certain situations, the operations of State aircraft.

In order to ensure that State aircraft, including military, operating under general air traffic (GAT) rules continue to be included, a legal basis stemming from the SES framework needs to be maintained. In this context, in absence of Regulation (EC) No 552/2004, it is Regulation (EC) No 551/2004 that is the most appropriate as it addresses the use of airspace, which can be interpreted as including also equipment requirements for use of airspace by GAT.

To ensure the continuity in the application of the requirements for the use of aircraft equipment in the single European sky airspace, the detailed requirements laid down in the draft AUR regulation should be based on the relevant implementing rules previously adopted on the basis of Regulation (EC) No 552/2004.

In addition, during the consultation a concern was expressed that the removal of the term ‘State aircraft’ and its replacement with ‘aircraft referred to in Article 2(3)(a) of Regulation (EU) 2018/1139’ would generate an issue and a modification of the principles of the SES interoperability Regulations (in particular DLS, SPI, VCS and ACID) as the ‘State aircraft’ designates a type of aircraft (the owner of the aircraft), irrespective of the type of missions/operations it undertakes. It was stated that aircraft referred to in Article 2(3)(a) of Regulation (EU) 2018/1139 address aircraft according to the specific activities (military, customs, police, search and rescue, firefighting, border control, coastguard) which could be relevant in the context of the rules of the air (SERA), while the approach proposed with NPA 2022-107 is not considered applicable in the context of airspace usage requirements and CNS equipment carriage.

Therefore, with this Opinion the Agency reintroduces the term ‘State aircraft’. However, the Agency invites the Commission to further discuss and analyse the subject with the Member States as the intent of the proposed Regulation on airspace usage requirements is to address the required aircraft equipage to enable particular ATM/ANS services when civil and State aircraft (including military, customs and police aircraft) operate in conformity with the procedures of the ICAO, i.e. as general air traffic.

#### **2.3.4. COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX amending Implementing Regulation (EU) 2017/373 as regards the ATM/ANS systems and ATM/ANS constituents and the interoperability of the European Air Traffic Management network and repealing Regulation (EC) No 1032/2006, Regulation (EC) No 633/2007 and Regulation (EC) No 262/2009**

The amendment to Regulation (EU) 2017/373 results from:

- the introduction of the new conformity assessment framework for ATM/ANS equipment; and
- the implementation of Article 140(2) ‘Transitional provisions’ of the Basic Regulation that requires not later than 12 September 2023 the implementing rules adopted on the basis of Regulations (EC) No 216/2008 and (EC) No 552/2004 shall be adapted to the Basic Regulation.

In the context of the new conformity assessment framework, those items of ATM/ANS equipment that will be neither subject to certification nor to declaraton, shoud demonstate their confimity by means



of a statement of compliance issued by the ATM/ANS provider (or by an approved organisation involved in the design and/or production of ATM/ANS equipment). Consequently, the oversight responsibilities for such processes will lie with the competent authority responsible for the oversight of the provision of ATM/ANS services, which is either NCA or EASA in the case of pan-European or third-country ATM/ANS providers. The new framework will ensure a better link between the oversight of the conformity assessment activities and the use of the generated evidence in the context of the review of changes to the functional systems of the ATM/ANS providers, ensuring a seamless information exchange and cooperation of the relevant competent authorities using the tools of the EASA system.

The main amendments related to the ATM/ANS providers' responsibilities as regards the 'changes to the functional system' are stipulated in ATM/ANS.OR.A.045 and they relate to the ATM/ANS provider's activities before integrating ATM/ANS equipment into the functional system.

In the context of the adaptation of the SES interoperability Regulations to the Basic Regulation included, a review of the following Regulations has been performed:

- Regulation (EC) No 1032/2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units;
- Regulation (EC) No 633/2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units; and
- Regulation (EC) No 262/2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the single European sky.

Accordingly, two new articles are proposed to be introduced to Regulation (EU) 2017/373, addressing Member States' responsibilities, namely:

- Article 3e 'Allocation of Mode S interrogator codes'; and
- Article 3f 'Use of the single European sky airspace'.

In addition, amendments to specific provisions in Annex IV 'Part-ATS', Annex VIII 'Part-CNS' and Annex XII 'Part-NM' are proposed to be introduced as follows:

- ATS.OR.400 'Aeronautical mobile service (air-ground communications) — general', resulting from the transposition of Regulation (EC) No 1079/2012 laying down the requirements for the voice channels spacing for the single European sky (VCS);
- ATS.OR.415 'Aeronautical mobile service (air-ground communications) — area control service', resulting from the transposition of Regulation (EC) No 29/2009 on data link services, establishing the link with the new AUR Regulation, and the ATS providers' responsibility to have the capability to provide data link services to aircraft equipped with all communication and other equipment necessary for the intended flight. This proposal is to be considered in conjunction with the proposed introduction of the new Section 15 to the SERA Regulation (see Section 2.3.5).
- in conjunction with the new Article 3e, the new ATS.OR.446 'Surveillance data' is introduced to Annex IV (Part-ATS) and Section 2 'TECHNICAL REQUIREMENTS FOR PROVIDERS OF



SURVEILLANCE SERVICE’) is introduced to Annex VIII (Part-CNS). In this context, the new technical requirements as regards the allocation and use of Mode S interrogate code for the surveillance service providers and the Network Manager are introduced in points CNS.TR.205 and NM.TR.105 respectively, resulting from the transposition of Regulation (EC) No 262/2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the single European sky (MSI).

- ATS.OR.430 ‘Aeronautical fixed service (ground–ground communications) — general’ and ATS.TR.230 ‘Transfer of responsibility for control’ with the associated Appendix 2 result from the transposition of Regulation (EC) No 1032/2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units (COTR); and
- points (b) and (c) of ATS.OR.446 ‘Surveillance data’ and NM.TR.110 ‘Flagging of flights eligible for individual identification using the aircraft identification feature’ are introduced, resulting from the transposition of Implementing Regulation (EC) No 1206/2011 laying down requirements on aircraft identification for surveillance for the single European sky (ACID).

### 2.3.5. COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX amending Implementing Regulation (EU) No 923/2012 as regards interoperability of the European Air Traffic Management network and repealing Regulation (EC) No 1033/2006

The following amendments are proposed to the SERA Regulation resulting from the transposition of Regulation (EC) No 1033/2006 lays down the requirements on procedures for flight plans in the pre-flight phase for the single European sky:

- Amendment of **Article 1(3)** to extend the scope of the applicability of the SERA Regulation to the Network Manager (NM);
- Addition of a few relevant definitions to **Article 2**;
- Amendments to **Section 4** ‘Flight plans’ of the Annex ‘Rules of the air’ with the aim to introduce, among others, responsibilities for the affected parties involved in the flight planning chain (for example, the Network Manager’s tasks in the pre-flight phase derived from the transposition of the related provisions from Regulation (EC) No 1033/2006). In addition, a requirement mandating that operations manuals contain the necessary instructions and information developed and maintained by the Network Manager is proposed, provided that any deviations from these instructions would lead to rejection of the flight plan by the integrated initial flight plan processing system (IFPS) and, thus, it is considered essential that all users adhere to the referenced instructions. Furthermore, it is proposed to delete the reference to repetitive flight plans (RPL) as it is no longer applicable in the EUR region. Finally, selected provisions from Regulation (EC) No 1207/2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky and Regulation (EC) No 1079/2012 laying down requirements for voice channels spacing for the single European sky (VCS) are proposed to be transposed.
- **New Section 15** concerning controller-pilot data link communications (hereinafter CPDLC) procedures on the basis of ICAO provisions laid down in Chapter 8 ‘Aeronautical Mobile Service — Data Link Communications’ of ICAO Annex 10, Volume 2. These ICAO provisions were referenced in Regulation (EU) No 29/2029 and hence do not constitute new requirements or



obligations in the context of the interoperability framework. The uniform application within the airspace of the single European sky of specific procedures relating to the use of data link is critical for the achievement of interoperability and seamless operations. ICAO has defined standardised air-ground applications context management and CPDLC for the application of data link services. Air traffic service providers and operators should support these applications and use a common standardised message set to ensure end-to-end interoperable implementations of data link services.

- New **Appendix 6** addressing the completion of a flight plan.

### 2.3.6. Other measures

#### **‘Information security risk’ Regulation (Part-IS)**

In 2021 the Agency issued Opinion No 03/2021 ‘Management of information security risks’. Its objective was to efficiently contribute to the protection of the aviation system from information security risks, and to make it more resilient to information security events and incidents. To achieve this objective, that Opinion proposed the introduction of provisions for the identification and management of information security risks which could affect information and communication technology systems and data used for civil aviation purposes, detecting information security events, identifying those which are considered information security incidents, and responding to, and recovering from, those information security incidents to a level commensurate with their impact on aviation safety.

These provisions apply to competent authorities, including the Agency, as applicable, and organisations in all aviation domains (i.e. production and design organisations, air operators, maintenance organisations, continuing airworthiness management organisations (CAMOs), training organisations, aero-medical centres, operators of flight simulation training devices (FSTDs), ATM/ANS providers, U-space service providers and single common information service providers, aerodrome operators and apron management service providers.

Taking into account the new framework proposed with this Opinion, the Agency is complementing the proposal submitted for consultation with NPA 2022-09 by:

- introducing the relevant Part-IS provisions for organisations involved in the design and/or production of ATM/ANS equipment and the Agency acting as competent authority; and
- adding a new article intended to amend the scope of the draft Part-IS Regulation.

## 2.4. What are the stakeholders’ views — outcome of the consultation

### 2.4.1. Outcome of the NPA 2022-09 consultation (RMT.0161 Subtask 1)

During the NPA 2022-09 public consultation (Subtask 1 of RMT.0161), EASA received 1 160 comments, which essentially contributed to the improvement of the proposed rules, from organisations and individuals representing all the aviation domains.

EASA reviewed the comments received during the public consultation. The comments received and EASA’s responses to them are presented in Comment-Response Document (CRD) 2022-09.

Besides the supporting comments on the proposed framework, the feedback received advised EASA of the main areas for which further clarification, communication and developments are needed. Such areas include, for example, various processes related to detailed specifications; while stressing their

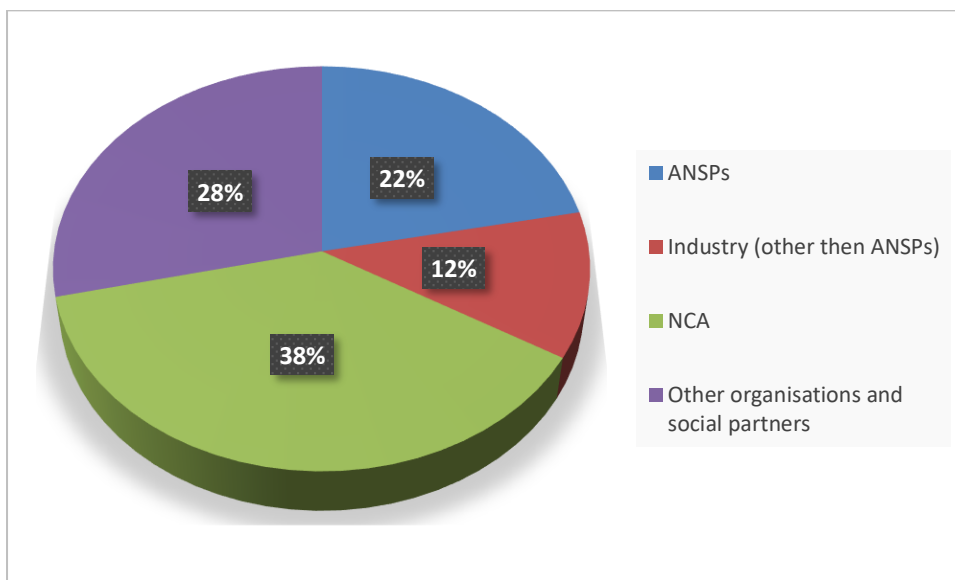


importance, several commenters expressed their concern about how the specifications will be developed, who can contribute to the preparation and how their general acceptance can be assured. Other subjects of general nature and addressed by several commenters concerned particular subjects like the role of DPOs, balanced unhindered market access and the transitional measures. Due to the high number of comparable (or sometimes even similar) comments concerning NPA aspects, EASA responded to such comments through topic-based answers.

In addition, a high number of responses were received to the specific questions addressed to stakeholders via the NPA 2022-09 proposal, for which amendments were required and certainly assisted in the development of this Opinion. The most significant new amendments concern the regulatory categorisation of ATM/ANS equipment subject to each conformity assessment method as well as the classification of changes which can be introduced without a new product assessment.

#### 2.4.2. Outcome of the AB focused consultation of NPA 2022-107 (RMT.0161 Subtask 2)

NPA 2022-107 titled ‘Simpler interoperability framework for the single European sky airspace’ was consulted with the EASA ABs. 490 comments from 21 commenters were received with the following shares by stakeholder category: 38 % from NCAs, 34 % from the industry (22% from the ANSPs and 12% from others than ANSPs), and 28 % from other organisations and social partners.



The following summary indicates the main subjects of interest for commenters and the related EASA views and actions.

#### Removal or not sufficient explanation of removal of definitions

The received comments indicated that the purpose for the removal of certain definitions used in the SES interoperability Regulations was not clear. Considering the feedback received, EASA has reassessed the proposal and ensured that the definitions of the terms used in the final regulatory text are included. It should be highlighted that only ‘State aircraft’ definition is not transposed given that ‘general air traffic’<sup>14</sup> addresses it.

<sup>14</sup> ‘general air traffic’ means all movements of civil aircraft and *State aircraft (including military, customs and police aircraft)* carried out in conformity with the procedures of the International Civil Aviation Organization (‘ICAO’);

Furthermore, EASA is considering the development of specific GM, to provide for further clarification.

'State aircraft' instead of reference to 'aircraft referred to in Article 2(3)(a) of Regulation (EU) 2018/1139'

As mentioned in Section 2.3.3, some of the commenters expressed concern about the removal of the term 'State aircraft' and its replacement with 'aircraft referred to in Article 2(3)(a) of Regulation (EU) 2018/1139'; one of them claimed that this would generate an issue and a modification of the principles of the SES interoperability Regulations (in particular DLS, SPI, VCS and ACID) as the 'State aircraft' designates a type of aircraft (the owner of the aircraft), irrespective of the type of missions/operations it undertakes. The commenter stated that aircraft referred to in Article 2(3)(a) of Regulation (EU) 2018/1139 addresses aircraft according to the specific activities (military, customs, police, search and rescue, firefighting, border control, coastguard) which could be relevant in the context of the rules of the air (SERA), while the approach proposed with NPA 2022-107 is not considered applicable in the context of airspace usage requirements and CNS equipment carriage.

Therefore, with this Opinion the Agency reintroduces the term 'State aircraft'. However, the Agency invites the Commission to further discuss and analyse the subject with the Member States as the intent of the proposed Regulation on airspace usage requirements is to address the required aircraft equipage to enable particular ATM/ANS services when civil and State aircraft (including military, customs and police aircraft) operate in conformity with the procedures of the ICAO, i.e. as general air traffic.

Insufficient amendments introduced in the transposed text

Following the principles presented in NPA 2022-09 'Establishment of a regulatory framework on the conformity assessment of ATM/ANS systems and ATM/ANS constituents (ATM/ANS equipment) (Subtask 1)', and based on the results of the review and assessment of Regulations (EC) Nos 1032/2006, 1033/2006, 633/2007, 262/2009, 29/2009, and Implementing Regulations (EU) Nos 1206/2011, 1207/2011, and 1079/2012 (the single European sky interoperability (SES IOP) Regulations), the proposal put forward in NPA 2022-107 mainly transposes the requirements from the requirements from the referenced IOP regulations, which are neither covered by the new conformity assessment framework for ATM/ANS equipment not in the existing rules into EASA Basic Regulation framework, without in principle introducing changes to the obligations of the affected parties. However, areas where improvements are required, have already been indicated by the commenters.

The Agency is already considering the feedback received that will be addressed in already existing RMT activities.

Questions on rationales and requests for clarification

Some commenters requested further explanations on technical details and suggested textual amendments to the proposals. In the majority of cases, EASA has taken such comments into account for further improvement of the regulatory text resulting in the proposal included in this Opinion, while in other cases comments triggered the evaluation for the need of associated AMC and/or GM. The comments received and EASA's responses to them will be presented in the form of a Comment-Response Document (CRD) to NPA 2022-107 to facilitate the better understanding of the approach proposed.



### Supportive comments with request for holistic review of the proposed changes

Overall, no major and/or controversial items have been identified throughout the preparation of the proposal.

#### **2.4.3. MAB advice in accordance with Article 6 (9) of the Rulemaking procedure**

As a last step, according to Article 6(9) of the Rulemaking Procedure, the Agency sought the advice of the Member States' Advisory Body (MAB) on the final text of the Opinion to detect any substantially divergent views of Member States. The Agency invited the MAB to indicate any outstanding substantial conceptual view that the Agency is unaware of.

Three MAB members provided feedback mostly on procedural aspects of Article 6(9), and one provided substantial technical comments on the final regulatory material after consultation of the proposal in NPA 2022-107, which the Agency has duly considered, in particular related to:

- the exclusion of the European outermost regions from the scope of the new framework;
- the coordination with the European Commission on the requirement to notify to the European Commission annually the lists of aircraft not equipped with 8.33kHz radios or Mode S/ADS-B transponders; and
- the need for high-level description of the surveillance equipment in the new proposal on AUR implementing Regulation.

One MAB member reminded the Agency of the need for more visibility on the milestones of the deliverables of Subtask 3 of RMT.0161 and the importance to have them published on time and right after the publication of the Regulations.

#### **2.5. What are the expected benefits and drawbacks of the proposed amendments**

EASA has developed and published the impact assessment (IA) concerning this regulatory proposal; it can be found in Chapter 4 of NPA 2022-09.

As regards the transposition of the referenced eight interoperability Regulations to the framework of EASA Basic Regulation, none of the elements identified in the IA are expected to have major impacts on EU aviation stakeholders with regard to implementation challenges, as the subject requirements have already been implemented throughout the EU; the IA can be found in Chapter 2.4 of NPA 2022-107.

Taking into account the changes to the draft regulatory material introduced as a result of the public consultation of NPA 2022-09 and of the AB consultation of NPA 2022-107, the IA has been reviewed and amended as shown below.

This regulatory initiative supports the resolution of the identified shortcomings of the previous Interoperability framework, such as:

- (a) fragmentation of the ATM/ANS ground equipment market because of the wide variety and the prevalence of the national technical specifications used in the procurement of ATM/ANS equipment;
- (b) lack of level playing field between the regulated entities along the ATM/ANS equipment life cycle chain (ATM/ANS equipment manufacturers, ATM/ANS providers and their NCAs) across Europe;



- (c) unnecessary complexity and economic burden for manufacturers as well as for ATM/ANS providers, slowing down the coordinated introduction of new, agreed, and validated concepts of operation and technologies;
- (d) lack of industry cooperation at European Union level, with a negative impact on the introduction of new operational concepts, such as digital technologies and automation that are required to ensure seamless interoperability and network efficiency for the European ATM system.

### Overview

The overall conclusions of the IA remain unchanged compared to those of the IA published with NPA 2022-09. The main impacts generated by the regulatory proposal put forward with this Opinion may be summarised as follows:

#### **Benefits in terms of proportionality**

Traditional ATM/ANS equipment manufacturers would benefit from the certification and approvals by EASA as this would provide them with more opportunities for growth, access to the market and elevated status.

Non-complex ATM/ANS providers would also benefit from the availability of certified/declared high-quality products, while for complex ATM/ANS providers issuing the ATM/ANS equipment statement of compliance, the interaction between their NCAs and EASA would promote standardisation towards interoperable and more seamless operation of the European ATM Network.

Moreover, the improved industry cooperation at European Union level would reduce the fragmentation of the ATM/ANS equipment market and ensure introduction of digital technologies and automation in the ATM/ANS sector in a faster pace exploiting internal and external market opportunities.

#### **Considerations on cost efficiency**

- ATM/ANS equipment manufacturers will experience reduction of costs and administrative burden in the medium and long term due to the decreased workload associated with oversight by the ATM/ANS providers that purchase the equipment and their competent authorities. This will be enabled with a single, harmonised and mutually recognised mechanism leading to the approvals and certificates issued by EASA. This consideration takes into account the additional costs related to the approval of organisations involved in the manufacturing of the equipment concerned.
- ATM/ANS providers would benefit from the elevated status of the suppliers approved by EASA. Hence, costs of testing and verification during the integration process will be reduced. ATM/ANS providers would also benefit from the presumption of conformity afforded by the attestation, which reduces the effort required to obtain technical approval.
- The competent authorities will experience cost reduction and cost efficiency in resources as all activities linked to the conformity assessment of certain ATM/ANS equipment will not be necessary any more at national level, being already done by EASA.
- EASA will experience neutral cost since the initial additional effort in relation to organisation approvals and ATM/ANS equipment certification activities would be compensated by the Fees & Charges scheme implemented by EASA.

**Benefits in terms of harmonisation of technical requirements**

The proposal aims at a single, harmonised and mutually recognised mechanism to attest compliance of certain ATM/ANS equipment based on its intended use for the safe, interoperable, and efficient operation of the EATMN for all phases of flight. This will be based on the demonstration of compliance with the relevant harmonised detailed certification/declaration/statement of compliance specifications, which is the novelty to be introduced in accordance with Article 47(1)(a) of the Basic Regulation to be used for the purchase of ATM/ANS equipment; this will help reducing the fragmentation of the EATMN. Common detailed specifications would also support avoiding multiple oversight by the competent authorities and by the ATM/ANS providers purchasing the equipment in question.

Furthermore, enhancing the level of common, harmonised system requirements would result in greater efficiency and lower cost for system procurement and maintenance and in improved operational coordination, thus reducing the fragmentation of the ATM/ANS equipment market and facilitating industry cooperation at European level.

**Benefit in terms of level playing field**

EASA considers the approach in the proposal well balanced and aligned with the driving principles in the Basic Regulation on the subject, allocating consistently the responsibilities related to the certification of, and receipt of declarations for, ATM/ANS equipment and those related to the approval of the organisations involved in the design and/or production of such equipment. Moreover, without ensuring the consistency in the allocation of those responsibilities, significant complications to the oversight processes and unnecessary administrative burden and cost would be envisaged.

One of the main evolutions provided by this Opinion is the distinction between the responsibilities of the ATM/ANS providers and those of the organisations involved in the design and/or production of ATM/ANS equipment, and the clear definition of the roles and responsibilities of the different actors. In this context, the proposal aims to discharge the responsibility from the ATM/ANS providers and allocate them to the ATM/ANS equipment manufacturers by introducing the approval and continuing oversight scheme thereof.

The introduction of the different means of conformity assessment and demonstration of compliance with the essential requirements applicable to ATM/ANS equipment is expected to provide benefits in terms of proportionate cost regarding the methods for conformity assessment and demonstration of compliance.

**EASA acting as competent authority**

It is well acknowledged that this proposal would potentially affect EASA's resources. Therefore, the Commission should ensure that the Agency has the necessary resources and capabilities, taking into account all relevant factors, including an assessment carried out by the Agency to determine the resources needed for the exercise of its newly assigned tasks under this proposal. The implementation of the proposal will require the Agency to plan in advance the necessary resources for the initial certification and continuing oversight of the organisations involved in the design and/or production of ATM/ANS equipment as well as for the certification and registry of the declarations of ATM/ANS equipment, including their continuous oversight. However, this oversight by the Agency will fall under





the Fees & Charges scheme to recover the costs from certified organisations. Consequently, the financial impact on the Agency will be neutral.

### **Conclusion**

Enhancing the level of common, harmonised system requirements is expected to result in greater efficiency and lower cost for system procurement and maintenance and in improved operational coordination, thus reducing the fragmentation of the ATM/ANS equipment market and facilitating industry cooperation at European level.



### 3. How we monitor and evaluate the proposed amendments

The effectiveness of the proposed regulatory framework as regards the conformity assessment of ATM/ANS equipment will be measured by monitoring and evaluating:

- the number of applications for ATM/ANS equipment certification;
- the number of requests to register a declaration of design compliance for ATM/ANS equipment;
- the number of applications for organisations wishing to become an approved organisation involved in the design and/or production of ATM/ANS equipment;
- the safety performance of ATM/ANS equipment subject to conformity assessment;
- the number of findings that are raised for approved organisations involved in the design and/or production of ATM/ANS equipment during oversight.

In addition, EASA will monitor the implementation of the EU regulatory framework as regards the ATM/ANS equipment subject to statement of compliance through regular standardisation activities as well as through regular feedback received from the EASA ABs.

These inputs will facilitate the assessment of how efficiently the implementing measures have been applied.

Cologne, 31 January 2023

*For the European Union Aviation Safety Agency*

*The Executive Director*

Patrick KY



## 4. References

### 4.1. Related EU regulations

- Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1)
- Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) — Statement by the Member States on military issues related to the single European sky (OJ L 96, 31.3.2004, p. 1)
- Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) (OJ L 96, 31.3.2004, p. 10)
- Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) — Commission statement (OJ L 96, 31.3.2004, p. 20)
- Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation) (OJ L 96, 31.3.2004, p. 26).
- Regulation (EC) No 1032/2006 of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units (OJ L 186, 7.7.2006, p. 27)
- Regulation (EC) No 1033/2006 of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the single European sky (OJ L 186, 7.7.2006, p. 46)
- Regulation (EC) No 633/2007 of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units (OJ L 146, 8.6.2007, p. 7)
- Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the single European sky (OJ L 13, 17.1.2009, p. 3)
- Regulation (EC) No 262/2009 of 30 March 2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the single European sky (OJ L 84, 31.3.2009, p. 20)
- Regulation (EU) No 1206/2011 of 22 November 2011 laying down requirements on aircraft identification for surveillance for the single European sky (OJ L 305, 23.11.2011, p. 23)
- Regulation (EU) No 1207/2011 of 22 November 2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky (OJ L 305, 23.11.2011, p. 35)
- Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No



1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (OJ L 281, 13.10.2012, p. 1)

- Regulation (EU) No 1079/2012 of 16 November 2012 laying down requirements for voice channels spacing for the single European sky (OJ L 320, 17.11.2012, p. 14)
- Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (OJ L 62, 8.3.2017, p. 1)

#### 4.2. Related EASA decisions

n/a

#### 4.3. Other references

- Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation) (OJ L 96, 31.3.2004, p. 26)
- NPA 2022-09 'Establishment of a regulatory framework on the conformity assessment of ATM/ANS systems and ATM/ANS constituents (ATM/ANS equipment) (Subtask 1)' issued on 16 August 2022
- NPA 2022-107 'Simpler interoperability framework for the single European sky airspace' issued to EASA Advisory Bodies on 30 November 2022
- ICAO Annex 10 'Aeronautical Telecommunications' (Volume II 'Communication Procedures' including those with PANS status) — Seventh Edition, July 2016
- ICAO Annex 10 'Aeronautical Telecommunications' (Volume V 'Aeronautical Radio Frequency Spectrum Utilization') — Third Edition, July 2013
- ICAO Annex 11 'Air Traffic Services' — Fourteenth Edition, July 2016
- ICAO Doc 4444 'Procedures for Air Navigation Services — Air Traffic Management' (PANS ATM) — Sixteenth Edition, 2016
- ICAO Doc 7030 'Regional Supplementary Procedures' — Fifth Edition, 2008 — Amendment 9 of 24.04.2014



## 5. Related document

CRD 2022-09 'Establishment of a regulatory framework on the conformity assessment of ATM/ANS systems and ATM/ANS constituents (ATM/ANS equipment)'.

